IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
CIVIL APPLICATION NO.978 OF 2006
& C.A.No.979/06 Along with
SECOND APPEAL (ST) NO.14220 OF 2006

1. Dashrath Kondiba Gaikwad,
since deceased through L.Rs
1A. Smt. Saraswati Dashrath Gaikwad
since deceased through her heirs
1B.Sunanda Dashrath More & ors. Applicants/
Appellants.
(Orig.Defts)

Vs

1. Smt.Yamuna shankar Gaikwad
and anr. .. Respondents.
(No.1-Plff)

Mr Vijay D.Patil, for the applicants/appellants.
Mr S.P.Kadam, for respondent no.1.

CORAM : **D.B.BHOSALE,J.**
DATE : 07/02/2007

PC:

1. Heard the learned counsel for the parties.

2. I perused the application and the reply filed by the respondent-plaintiff. There is delay of more than two years in filing the appeal and, in view thereof, by consent of the learned counsel for the parties, I heard the application for condonation of delay and the appeal on merits.

3. The appeal is directed against the concurrent findings recorded by the courts below by which the suit filed by the respondent-plaintiff for partition stands

decreed. Mr Patil, learned counsel for the appellants, submitted that the land Gat nos.541, 1260 and house property no.260 are self-acquired properties of appellant-defendant no.1 and hence they are not liable to be partitioned. In support of this contention, he took me through the findings recorded by the appeal court and in particular paragraphs 15 and 19 thereof. I perused the judgment of both the courts below. They have appreciated the material on record in proper perspective and have rightly held that the properties, bearing Gat nos.541, 1260 and dwelling house property no.260 are the joint family properties and are liable to be partitioned. Mr Patil submitted that the appellant/defendant no.1 has clearly established that he had sufficient independent income from which he could acquire these properties. In support, he took me through the observations made by the learned Judge in paragraph 19. It is true that the appellant/defendant no.1 was employed and had income from the service. However, no further particulars about his exact income/savings were furnished by him and in view thereof the courts below have rightly rejected the case set up by the appellants. In the circumstances, the contention of Mr Patil deserves to be rejected.

4. Mr Patil then submitted that in view of the

provisions of section 23 of the Hindu Succession Act,1956, the dwelling-house properties are not liable to be partitioned and the decree in respect thereof deserves to be set aside. Mr Kadam, learned counsel for the respondent-plaintiff, fairly stated that he has instructions to state that the plaintiff shall not seek partition of the dwelling-house, however, she (respondent-plaintiff) reserves her right to stay in the dwelling house of the joint family. The statement of Mr Kadam is accepted. In view thereof, the decree in respect of the dwelling-house properties as described in paragraph 1-B stands modified as follows: The respondent-plaintiff shall not be entitled to seek partition of the dwelling-house as described in paragraph 1-B of the plaint, but her right of residence shall remain unaffected. However, it is made clear that if male heirs choose to divide their respective shares in the dwelling-house, she will be entitled to have separate share therein as per the decree. Except the aforesaid modification, rest of the judgments and order impugned in the present appeal stand confirmed. The second appeal accordingly stands disposed of. The civil applications for condonation of delay and for interim stay also stand rejected.

(D.B.BHOSALE,J.)